



Senate Committee On
**ENVIRONMENTAL
PRESERVATION**

Paula Dockery, Chair
Gary Siplin, Vice Chair

Meeting Packet

Tuesday, February 14, 2006
2:00 p.m. – 4:00 p.m.
401 SOB

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

EXPANDED AGENDA

COMMITTEE ON ENVIRONMENTAL PRESERVATION

Senator Dockery, CHAIR
Senator Siplin, VICE-CHAIR

DATE: Tuesday, February 14, 2006
TIME: 2:00 p.m. -- 4:00 p.m.
PLACE: Room 401, Senate Office Building

(MEMBERS: Senators Alexander, Argenziano, Baker, Constantine, Lawson and Smith)

| TAB | BILL NO. AND INTRODUCER | BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|--|----------------------------|---|---------------------|
| Consideration of proposed committee bill (Interim Project 2006-120 - Land Acquisition - Florida Forever Mid-Term Review): | | | |
| 1 | SPB 7100 | State Lands; clarifies duties of DEP, water management districts, & DOACS re state lands; revises appraisal requirements to provide for two appraisals for property valued at more than \$1 million; expands real estate services that board of trustees may obtain by contract; authorizes board of trustees to approve acquisition of lands for which purchase price does not exceed 150 percent of appraised value, etc. Amends FS. | |
| | | EP | 02/14/06 |
| 2 | SB 1092 Constantine | Brownfields/Redevelopment; increases amount & percentage of credit which may be applied against intangible personal property tax & corporate income tax for cost of voluntary cleanup of contaminated site; increases amount that may be received by taxpayer as incentive to complete cleanup in final year; increases total amount of credits that may be granted in any year; requires Enterprise Florida, Inc., to aggressively market brownfields, etc. Amends FS. | |
| | | EP CM GE GA | 02/14/06 |

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee



BILL: SB 7100

INTRODUCER: Environmental Preservation Committee

SUBJECT: State Lands

DATE: February 9, 2006

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--|---|-----------|-------------|
| 1. | Molloy  | Kiger  | EP | Pre-meeting |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill implements several of the recommendations of the Senate Environmental Preservation Committee's "Interim Report No. 2006-120, Land Acquisition - Florida Forever Mid-Term Review." The bill revises sections of statute pertaining to the acquisition, management, and surplusage of state lands, contains conforming and cross-reference corrections, deletes obsolete provisions, and clarifies certain requirements of the Florida Forever Program. Specifically, the bill:

- Requires that all lands titled in the name of the Board of Trustees of the Internal Improvement Trust Fund (BOT) or any state agency be inventoried and mapped.
- Authorizes the Department of Environmental Protection (DEP) to contract with the Florida Natural Areas Inventory (FNAI) to implement the mapping requirements subject to legislative appropriation.
- Transfers land acquisition procedures for conservation lands from s. 259.041, F.S. to s. 253.025, F.S.
- Authorizes state agencies to offer up to 110 percent of appraised value for property.
- Requires that the Legislature ratify any contract for a purchase adopted by the Acquisition and Restoration Council (ARC) and approved by the BOT where the purchase price exceeds more than 50 percent of DEP's annual Florida Forever allocation.
- Caps the purchase price for state lands at no more than 150 percent of appraised value.
- Clarifies responsibilities of the Division of State Lands (division) at DEP with respect to nonconservation lands.
- Limits the ARC's oversight of state lands to conservation lands.
- Revises the state's surplusage process to create a distinction between the sale of state lands as surplus property and the exchange of state lands for land of equal or higher benefit.

- Expands the purposes for which a local government may use surplus or exchanged property to include meeting the capital improvements element or a concurrency requirement of a local comprehensive land use plan.
- Directs the division to keep records of all requests for the sale or exchange of state lands, and provides that all requests for the state to sell or exchange property be made in writing.
- Clarifies the purposes and use of the Conservation and Recreation Lands Trust Fund (CARL TF).
- Clarifies procedures and policies for land acquisition under the Florida Forever program.

This bill substantially amends ss. 253.002, 253.025, 253.03, 253.034, 253.041, 253.111, 253.115, 253.42, 253.783, 259.0322, 259.035, 259.04, 259.041, and 259.105, F.S.; creates s. 259.0321, F.S.; and repeals ss. 253.03 (14); 259.035 (4), (5), and (6); 270.07; 270.08; and 380.0677 (7), F.S.

II. Present Situation:

Board of Trustees of the Internal Improvement Trust Fund (BOT)

Art. IV, s. 4 of the State Constitution, establishes the Governor, serving as chair, the Chief Financial Officer, the Attorney General and the Commissioner of Agriculture as the trustees of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund, as provided by law. The BOT is charged with the acquisition, administration, management, control, supervision, conservation, protection and disposition of all lands owned by, or which may inure to, the state or any of its agencies, except as otherwise provided by law. Section 253.02, F.S., provides that the board may not sell, transfer, or otherwise dispose of any lands the title to which is vested in the BOT except by a vote of at least three of the four trustees.

Statutory provisions governing the acquisition and disposal of lands by the state are contained in chapters 253 and 259, Florida Statutes. The DEP is directed to serve as staff to the BOT, and the Division of State Lands performs staff duties and functions related to the acquisition, administration, and disposition of lands which are titled in the name of the BOT. The BOT is provided broad rulemaking authority to fulfill its responsibilities for buying and selling state lands, and is also provided with the authority to waive certain statutory requirements or any of its own rules when purchasing state lands, so long as the public interest is reasonably protected. Although the state's acquisition programs are "voluntary" or "willing seller" programs, the BOT does have the authority, under certain conditions, to authorize the DEP to acquire property by exercising the power of eminent domain.

Land Acquisition

From 1969 through 1989 Florida acquired one million acres of land, most of which was acquired during the 10-year period from 1979-1989, and was purchased through five primary programs: the Outdoor Recreation Bonds Program, the Environmentally Endangered Lands (EEL) Program, the Conservation and Recreation Lands Program (CARL), Save Our Coast bonds, and the Save Our Rivers program funded through the Water Management Lands Trust Fund.

Conservation and Recreation Lands (CARL)

The CARL program was created by the Legislature in 1979 to acquire and manage public lands, and to conserve and protect environmentally unique lands and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL TF to accomplish the program's purposes. Projects proposed for acquisition were ranked in priority order on a list which was named the CARL list.

The CARL program was replaced by the Preservation 2000 program. The CARL TF, a nonlapsing, revolving trust fund, receives documentary stamp tax and phosphate severance tax revenues. These revenues are used to manage conservation and recreation lands, but can not be used for land acquisition without explicit permission from the BOT. Over the past five years, no lands have been acquired using CARL TF revenues. Further uses of the CARL TF include the payment of debt service for bonds issued under the EEL program, bonds issued for state capital projects on outdoor recreation lands, and bonds issued to fund the 1981 Save Our Coast program.

Preservation 2000 (P2000)

The P2000 program was created in 1990 as a \$3 billion land acquisition program funded through the annual sale of bonds. Each year for 10 years, the majority of \$300 million in bond proceeds was distributed to the DEP for the purchase of lands prioritized on the CARL list, the five WMDs for the purchase of water management lands, and the Department of Community Affairs (DCA) for land acquisition loans and grants to local governments under the Florida Communities Trust (FCT) program. The remainder of the bond proceeds were distributed to smaller acquisition programs at the DEP, the Department of Agriculture & Consumer Services (DACS), and the Fish and Wildlife Conservation Commission (FWC).

In the P2000 program, lands purchased by the DEP, DACS, and the FWC were titled in the name of the BOT. Lands purchased by the WMDs were titled in the name of the acquiring district. Lands acquired by the FCT for permanent state ownership were titled in the name of the BOT, but lands acquired in partnership with a local government were titled in the name of that local government.

The first series of P2000 bonds was authorized by the Legislature in 1990 and issued in the spring of 1991, and the last series was authorized in 1999 and issued in the spring of 2000. More than \$3 billion in bond proceeds and interest earnings have been distributed to the program recipients to purchase more than 1.7 million acres of land. Documentary stamp tax revenue is pledged to pay the debt service on P2000 bonds. Principal and interest payments total more than \$2.3 billion through December 31, 2004, and \$1.55 billion in debt service is payable on outstanding P2000 bonds through fiscal year 2012-2013.¹

Acquisition & Restoration Council (ARC)

The ARC was created as part of the Florida Forever program to serve as the successor agency to the Land Acquisition and Management Advisory Council (LAMAC). The LAMAC was responsible for establishing or updating the CARL list for submission to the BOT for approval. Acquisition projects were ranked in order of priority and the BOT approved all purchases.

¹ Debt service information on outstanding P2000 bonds provided by the Legislature's Office of Economic and Demographic Research, and includes refunding bonds.

Today, the ARC is responsible for evaluating, selecting and ranking state lands acquisition projects on the priority list, and can add or delete projects from the list. At least once a year, the list approved by ARC is submitted to the BOT for approval. The BOT can remove projects from the list but may not add projects and may not reprioritize the list. The ARC is supported by division staff.

Florida Forever

The Florida Forever program was created in 1999 as a successor program to P2000, and authorizes the issuance of not more than \$3 billion in bonds for land acquisition, water resource development projects, preservation and restoration of open space and greenways, and for outdoor recreation purposes. As part of Florida Forever, the Legislature authorized public land acquisition agencies to focus on acquisitions using alternatives to fee simple acquisition. Under the Florida Forever program, bonds may be issued for more or less than the \$300 million per year authorized under the P2000 program, but the entire program is limited to a total of \$3 billion.

| Florida Forever Land Acquisition Program - Appropriations & Funding Sources FY 2000-2001 through FY 2005-2006² | | | | |
|--|-----------------------------|----------------------|--|--|
| Fiscal Year | GAA Budget Authority | Bond Proceeds | Bonds Authorized but not issued | Other Revenue |
| 2000-2001 | \$300m | \$282m | | \$18m - Projected interest earnings |
| 2001-2002 | \$300m | \$295m | | \$5m - cash reserves |
| 2002-2003 | \$300m | \$250m | \$50m | |
| 2003-2004 | \$300m | | \$200m | \$34.1m - cash \$70.9m- unspent P2000 funds |
| 2004-2005 | \$300m | | | \$263.1m - General Revenue \$36.9m - P2000 TF interest earnings |
| 2005-2006 | \$300 | | \$300m | |
| Total | \$1.8b | \$827m | \$550m | \$423m |

To date, more than \$1.2 billion in bond proceeds and other revenues has been distributed to the entities receiving Florida Forever funding. Outstanding debt service through fiscal year 2030-2031 on all series of Florida Forever bonds issued to date is more \$1.7 billion.³

² Chart information provided by Ways & Means Committee of the Florida Senate and calculated as of September, 2005.

³ Debt service information on outstanding Florida Forever bonds provided by the Legislature's Office of Economic and Demographic Research, and includes refunding bonds.

| Florida Forever Projects Acquired or Approved for Acquisition by December 31, 2004⁴ | | | | | | | |
|---|---------------------------------|--|-----------------------|----------------------------------|----------------------------------|-----------------------------------|-----------------------------------|
| Agency | No. of Projects Acquired | Percentage of Total Projects Acquired | Acres Acquired | Percent of acres acquired | Per Acre Cost⁵ | Funds Expended⁶ | Percentage of expenditures |
| DACS | 32 | 6% | 14,297 | 3% | \$1,148 | \$16.42m | 2% |
| DEP | 89 | 17% | 229,616 | 53% | \$1,868 | \$428.82m | 46% |
| FCT | 181 | 34% | 22,032 | 5% | \$10,696 | \$235.66m | 25% |
| FWC | 22 | 4% | 6,581 | 2% | \$1,682 | \$11.07m | 1% |
| NWFWMD | 11 | 2% | 7,623 | 2% | \$1,508 | \$11.49m | 1% |
| SFWMD | 72 | 13% | 5,276 | 1% | \$11,213 | \$59.16m | 6% |
| SJRWMD | 37 | 7% | 64,051 | 15% | \$931 | \$59.65m | 6% |
| SRWMD | 36 | 7% | 55,471 | 13% | \$418 | \$23.17m | 3% |
| SWFWMD | 54 | 10% | 24,693 | 6% | \$3,500 | \$86.42m | 10% |
| | | | | | | | |
| TOTAL | 534 | 100% | 429,640 | 100% | Avg. - \$2,169 | \$931.86m | 100% |

Surplus lands

The surplusing of state lands is controlled by statutory and constitutional⁷ provisions which provide for the sale or exchange of state lands. To dispose of nonconservation lands, the BOT must determine that the property is no longer needed. To dispose of conservation lands, the BOT must determine that the property is no longer needed for the conservation purposes for which it was acquired, and in cases where conservation land is exchanged, the exchange must result in a net positive conservation benefit to the state. In all cases, the surplusing of state lands requires an affirmative vote of at least three of the members of the BOT. All property being sold or exchanged by the BOT must first be offered to the county in which the property is located.

⁴ Chart information provided by state agencies and water management districts receiving Florida Forever funds.

⁵ Per acre cost calculated using Florida Forever funds only. Average per acre cost including all funding sources such as local government matching or ad valorem tax dollars is \$2,188 per acre.

⁶ Total indicates total Florida Forever funds expended. Total expended including all funding sources such as local government matching or ad valorem tax dollars is \$1.24 billion.

⁷ Art. X, s. 18, State Constitution, adopted in November, 1998.

Section 253.0341, F.S., creates an expedited surplus process for local governments to submit a surplus request directly to the BOT. The BOT may make a determination to surplus nonconservation lands without a recommendation of the ARC or the division, and must consider the local government request within 60 days of receipt. Local government requests for the state to surplus conservation lands must be reviewed by the ARC for a recommendation on the request, and a final determination must be made by the BOT within 120 days of receipt of the request. Surplus property sold to a local government may not be sold for more than price the state paid when acquiring the property, regardless of the appraised value. However, local governments purchasing surplus property for less than appraised value must retain title for at least ten years. Surplus requests may be made by any public or private entity or person and are submitted to the lead managing agency for review prior to review by the ARC. Requests for surplus submitted by an entity other than a local government are guided by the provisions of s. 253.034 (6), F.S.

| Surplused P2000 & Florida Forever Property by reporting entity 2000-2004 | | | | |
|---|----------------------|--|--------------------------------|--------------------------|
| Entity | P2000 Acreage | Sold or Exchanged | Florida Forever acreage | Sold or exchanged |
| DACS | None | | None | |
| DEP | 1,534 acres | Exchanged for 288 acres of high conservation value lands | None | |
| | 1,507 acres | Exchanged for 14 acres. | | |
| | 5 acres | Exchanged for 5 acres. | | |
| | 2 acres | \$33,000 plus improvements | | |
| | 10 acres | \$135,000 | | |
| FWC | None | | None | |
| NWFWMD | 1 acre | To provide public access | None | |
| | 198 acres | Exchanged for 179 acres | | |
| | 19 acres | Exchanged for 52 acres | | |
| | 3 acres | For use as a cemetery. | | |
| SFWMD | .74 acres | \$30,919 | None | |
| | 2.29 acres | \$95,681 | | |
| SJRWMD | 1,306 acres | \$1,13m | 11 acres | \$27,740 |
| | 79 acres | Equal exchange | 58 acres (in process) | |
| | 6 acres | \$425,000 | | |
| SRWMD | None | | None | |
| SWFWMD | 487 acres | \$375,000 | 1,296 acres (request pending) | |
| | 27 acres | \$156,700 | | |
| | 99 acres | \$150,900 | | |
| | 221 | Exchanged for 488 acres | | |

III. Effect of Proposed Changes:

Section 1. Substantially revises s. 253.002, F.S., to clarify the duties of the DEP, the water management districts (WMDs), and the DACS with respect to state lands.

Provides that DEP staff duties include the collection, compiling, distribution and mapping of data that documents all state-owned lands and identifies conservation and nonconservation lands. Requires that all lands titled in the name of the BOT or any state agency shall be inventoried and mapped.

Authorizes the DEP to contract with the FNAI to implement the mapping requirements subject to legislative appropriation.

Provides that neither the BOT or DEP staff can negotiate the ability to use, transfer, withdraw, or sell water on or under lands, title to which is vested in the BOT or any state agency.

Section 2. Substantially revises s. 253.025, F.S., to incorporate land acquisition procedures for conservation lands transferred from s. 259.041, F.S. Reorganizes and clarifies the following:

- Requirements for evidence of marketable title.
- Appraisal requirements.
- Survey requirements.
- Confidentiality requirements.
- Requirements for acquisitions proposed by the Department of Corrections and the Department of Juvenile Justice

Provides that when the division is conducting a review of a proposed acquisition for compliance with rules of the BOT, a review of a purchase in excess of \$500,000 must include a general field inspection of the property by the review appraiser.

Authorizes state agencies to offer up to 110 percent of appraised value for properties to allow the state's inholdings and additions programs to effectively compete with the private sector in negotiating for acquisitions.

Provides that for any purchase adopted by the ARC and approved by the BOT and which has a purchase price of more than 50 percent of the annual funds allocated to DEP under the Florida Forever program, the contract for sale and purchase must be ratified by an act of the Legislature before it is binding on the state.

Section 3. Amends s. 253.03, F.S., to provide that rules of the BOT may not authorize any acquisition for which the purchase price exceeds more than 150 percent of appraised value. Provides that the restriction on purchase price may not be waived or modified by the BOT.

Provides that the BOT annual inventory of all publicly owned lands in the state include a summary of all surplus lands sold and exchanged by the state each year, and must indicate if those lands were acquired or managed by the state for conservation purposes, or if they were nonconservation lands.

Directs the Department of Revenue to share current tax roll data used to prepare the BOT inventory with the Division of State Lands for use in compiling an additional inventory of all state, federal, water management district, and local government lands.

Section 4. Amends s. 253.034, F.S., to substantially revise laws relating to the surplus of state lands, and to reorganize and clarify certain other provisions of law.

Revises the duties and responsibilities of the division for nonconservation lands to:

- Authorize the division to review all requests to sublease nonconservation lands, all land management plans for nonconservation lands, and all requests to sell or exchange nonconservation lands owned by the state.

Revises the duties and responsibilities of the ARC to:

- Remove all responsibilities relating to nonconservation lands.
- Clarify that ARC will review all requests to sublease conservation lands, all land management plans for conservation lands, and all requests to sell or exchange conservation lands owned by the state.

Revises the state's surplus process to:

- Provide that conservation lands determined by the BOT to be eligible for sale or exchange will be reclassified as nonconservation lands.
- Provide that all lands determined by the BOT to be eligible for sale will be designated as surplus land and may be sold by an affirmative vote of at least 3 BOT members.
- Provide that all lands determined by the BOT to be eligible for exchange are not considered surplus property but must be exchanged by a vote of at least 3 BOT members.
- Clarify that conservation land exchanges must result in a net positive conservation benefit to the state.
- Expand the purposes for which a local government may use surplus or exchanged property to include meeting the capital improvements element or a concurrency requirement of a local comprehensive land use plan.
- Require that requests for the sale or exchange of state lands must be submitted in writing by the public or private entity or person making the request, and that denial of a request for the sale or exchange of state lands must be made in writing and must include the reason for denial.
- Direct the division to keep records of all requests for the sale or exchange of state lands and keep records of approvals or denials of those requests.
- Direct the lead managing agency to submit a copy of the request for sale or exchange of state lands to the division for their records.
- Direct the BOT to adopt rules to implement procedures for administering requests for the sale or exchange of lands and criteria for when the division may approve requests on behalf of the board for the sale or exchange of state nonconservation lands.

Section 5. Amends s. 253.041, F.S., to clarify that requests submitted by counties and other units of local governments for the sale or exchange of state lands must be submitted in writing.

Section 6. Substantially amends s. 253.111, F.S., to correct inconsistencies in notices provided by the BOT to counties for the sale of state lands.

Section 7. Amends s. 253.115, F.S., to clarify notice and publication requirements for the sale, lease, or exchange of, or a grant of easement on, over, under, above or across state lands. Expands exemption from notice and publication requirements to include homestead, railroad, or canal grants as provided by law, and lands conveyed pursuant to s. 253.111, F.S.

Section 8. Amends s. 253.42, F.S., to clarify provisions governing the BOT's exchange of lands. Expands the public purposes for which exchanged lands may be used to include the capital improvement elements or concurrency requirements of a local comprehensive land use plan.

Section 9. Amends s. 253.783, F.S., to clarify that requirements for the disposal of surplus lands contained in the section apply only to former Cross Florida Barge Canal lands.

Section 10. Amends s. 259.032, F.S., to clarify the purposes and uses of the CARL TF.

Deletes the following obsolete provisions:

- Provisions establishing the policy of state for public ownership of natural areas.
- Ability of the BOT to use money in the CARL TF for land acquisition.
- Provisions governing the acquisition of conservation and recreation lands.
- References to the priority acquisition list.

Deletes land management provisions which are relocated to s. 259.0321, F.S., created in the bill. Deletes payment-in-lieu of taxes provisions which are relocated to s. 259.0322, F.S.

Section 11. Creates s. 259.0321, F.S., providing for the management of conservation lands by transferring provisions from s. 259.032, F.S.

Section 12. Amends s. 259.0322, F.S., to incorporate payment-in-lieu of taxes provisions transferred from s. 259.032, F.S.

Section 13. Amends s. 259.035, F.S.; to clarify the duties and responsibilities of the ARC for state conservation lands, and deletes the following provisions which are relocated to s. 259.105, F.S.:

- Authority for ARC to competitively evaluate, select, and rank projects eligible for the CARL list and Florida Forever funds.
- Provisions requiring an affirmative vote of 5 members of the ARC to change a project boundary or add a project to the priority list .

Section 14. Amends s. 259.04, F.S., to clarify that the ARC will assist the BOT in the development and execution of a comprehensive, statewide, 5-year plan to conserve, restore, and protect lands identified under the Preservation 2000 program and the Florida Forever program.

Provides that notwithstanding any other provision of law, any proposed project adopted by the ARC and approved by the BOT for which the total purchase price is more than 50 percent of the

annual Florida Forever funding provided to DEP must be ratified by an act of the Legislature before the purchase contract is binding on the state.

Section 15. Amends s. 259.041, F.S., to delete the following provisions which are relocated to s. 253.025, F.S.:

- Acquisition requirements.
- Rulemaking authority.
- Appraisal and appraisal confidentiality requirements.
- Final offer, conveyance, and audit requirements.
- Acquisition of lands containing cattle dipping vats.

Authorizes the Division of State Lands to review agreements for conservation lands being purchased at up to 110 percent of appraised value. Prohibits the BOT from approving acquisitions for which the purchase price exceeds more than 150 percent of appraised value. Authorizes the BOT to waive or modify all procedures governing land acquisition except the 150 percent of appraised value purchase price cap.

Section 16. Amends s. 259.105, F.S., the Florida Forever program, to:

- Clarify funding for the Florida Recreation and Development Assistant Program at DEP.
- Direct the BOT to adopt rules governing the acquisition of inholdings and addition properties through the use of boundary amendments for lands otherwise not identified for acquisition as part of a Florida Forever purchase, a land management plan, or a management prospectus.
- Clarify that the acquisition of boundary properties meeting the purchase requirements of the Florida Forever program are exempt from ARC's competitive selection process if the estimated value of the inholding or addition does not exceed \$500,000.
- Authorize ARC to develop a Florida Forever project list more than once a year.
- Clarify that the project list include projects approved for funding under the Preservation 2000 or earlier conservation programs which appeared on the CARL list.
- Clarify the process by which the ARC evaluates, selects and ranks projects for acquisition as an "A" list project or a "B" list project.
- Clarify that there is only one project acquisition list entitled the "Florida Forever" list.
- Clarify that legislative appropriations and not just bond proceeds may be expended for purposes of the Florida Forever program.
- Delete language authorizing the ARC to amend CARL projects, and add or delete projects to the CARL list.

Sections 17 through 30. Amends ss. 201.15, 253.027, 255.25001, 259.036, 259.101, 259.1051, 260.015, 260.016, 369.317, 373.139, 375.045, 380.0666, and 589.07, F. S., to conform and to correct cross-references.

Section 31. Repeals the following:

- Subsection (14) of s. 253.03, F.S.; relating to the use of appropriate appraiser selection and contracting procedures by the Division of State of State Lands. (Relocated to and updated in s. 253.025, F.S.)

- Subsections (4), (5), and (6) of s. 259.035, F.S.; relating to acquisition procedures for Florida Forever projects. (Relocated to and updated in s. 259.105, F.S.)
- Sections 270.07 and 270.08, F.S.; relating to the sale of certain public lands without advertisement and notice of sale of public lands. (Relocated to and updated in ss. 253.111 and 253.115, F.S.)
- Subsection (7) of s. 380.0677, F.S., relating to appropriations for the Green Swamp Land Authority.

Section 32. Provides that act shall take effect July 1, 2006, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The proposed committee bill does not require cities and counties to expend funds or limit their authority to raise revenues or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None expected.

C. Government Sector Impact:

Counties and other units of local government may see some benefits due to the expanded purposes for which sold or exchanged state lands may be used by local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee

BILL: SB 1092

INTRODUCER: Senator Constantine

SUBJECT: Redevelopment of Brownfields

DATE: January 25, 2006

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------------|------------------|-----------|--------------------|
| 1. | Branning <i>SB</i> | Kiger <i>WBC</i> | EP | Pre-meeting |
| 2. | | | CM | |
| 3. | | | GE | |
| 4. | | | GA | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill amends various provisions of the Florida Brownfield Redevelopment Act.

Specifically, the bill:

- Increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site, and increases the amount of tax credit that may be granted to a tax credit applicant per year from \$250,000 to \$500,000;
- Increases the percentage and amount of tax credit that may be received by the taxpayer in the final year of the cleanup as an incentive to complete the cleanup. The percentage is increased from 10 percent to 25 percent and the amount is increased from \$50,000 to \$500,000;
- Requires Enterprise Florida, Inc., to aggressively market brownfields;
- Increases the amount of the brownfields loan guarantee from 10 to 25 percent; and
- Repeals the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

This bill substantially amends the following sections of the Florida Statutes: 199.1055, 220.1845, 376.30781, 288.9015, and 376.86.

This bill repeals the following sections of the Florida Statutes: 376.87 and 376.875.

II. Present Situation:

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields. Florida followed suit in 1997 and enacted the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned or underused real property, the development of which was complicated by real or perceived environmental contamination.

The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Relief and Liability and Brownfields Revitalization Act, also known as the “Brownfields Amendments.” The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites and provide grants to assess or cleanup a brownfields property.

The Florida Brownfield Redevelopment Act, consisting of ss. 376.77-376.85, F.S., provides legislative intent, a brownfield area designation process, environmental cleanup criteria, program eligibility and liability protections; and economic and financial incentives. Furthermore, s. 376.86, F.S., provides for a Brownfield Areas Loan Guarantee Program, and ss. 376.87 and 376.875, F.S., provide for brownfield property ownership clearance assistance and the creation of the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

Legislative intent—As provided in s. 376.78, F.S., the Legislature declared that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment. There should be incentives to encourage voluntary cleanup.

Designation and administration—Designation of a brownfield area must come from the local government through the passage of a local resolution. Once a brownfield area has been designated, the local government must notify the Department of Environmental Protection (DEP) and attach a map or a detailed legal description of the brownfield area. The designation of a brownfield area may be initiated in one of two ways:

- By a local government to encourage redevelopment of an area of specific interest to the community; or
- By an individual with a redevelopment plan in mind.

In determining the area to be designated, the local government must consider:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
- Whether the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage;
- Whether the area has potential to interest the private sector in participating in rehabilitation; and
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.¹

¹ s. 376.80(2), F.S.

A local government shall designate a brownfield area if:

- The person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate the site;
- The redevelopment and rehabilitation of the proposed brownfield site will result in economic productivity of the area and will create at least 10 new permanent jobs at the brownfield site²;
- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations;
- Notice has been provided to neighbors and nearby residents of the proposed area to be designated; and
- The person proposing the area for designation has provided reasonable assurance that there are sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.

The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitle the identified person to negotiate a brownfield site rehabilitation agreement with the DEP or an approved local program. The person responsible for rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local program to be eligible for certain benefits associated with the brownfields redevelopment program.

As of February 1, 2006, there were 125 designated brownfield areas in Florida. According to information reported by the Governor's Office of Tourism, Trade, and Economic Development to the DEP in January 2006, the cumulative totals for new job creation and capital investment attributable to the Brownfields Redevelopment program from inception of the program until December 31, 2005 are: 6,656 new direct jobs, 5,935 new indirect jobs, and \$546,913,933 of capital investment in designated brownfields areas.

Cleanup criteria—Risk-based corrective-action principles apply, to the maximum extent feasible, to the cleanup activities on a brownfield site within a designated brownfield area. These principles are designed to achieve protection of human health and safety and the environment in a cost-effective manner by taking into account natural attenuation, individual site characteristics, and the use of engineering and institutional controls.

Eligibility and liability protection—A person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program. Certain specified sites are not eligible for the program. Those sites include brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, or sites that have obtained or are required to obtain a hazardous waste operation, storage, or disposal facility permit, unless specifically exempted by a memorandum of agreement with the EPA.

² As specified in s. 376.80(2)(b), F.S., the 10 new permanent jobs may be full- or part-time and cannot be associated with the rehabilitation agreement or redevelopment project demolition or construction activities.

After July 1, 1997, petroleum and drycleaning contamination sites in a brownfield area cannot receive both funding assistance for the cleanup of the discharge that is available under the underground storage tank cleanup program or the drycleaning cleanup program and any state assistance available under s. 288.107, F.S., relating to brownfield redevelopment bonus refunds.

If a state or local government has involuntarily acquired a contaminated site within a brownfield area, it is not liable for implementing site rehabilitation corrective actions, unless the state or local government has caused or contributed to a release of contaminants at the brownfield site. Also, nonprofit conservation organizations, acting for the public interest, which purchase contaminated sites and which did not contribute to the release of contamination on the site also warrant protection from liability.

Lenders are afforded certain liability protections to encourage financing of real property in brownfield areas. Essentially, the same liability protections apply to lenders if they have not caused or contributed to a release of a contaminant at the brownfield site.

Economic and financial incentives—Since the Brownfields Redevelopment Act was envisioned to emphasize economic redevelopment, local governments were expected to play a significant role in the process. As a result, state and local governments are encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance.

Other economic and financial incentives available to brownfield sites are tax refunds for qualified target industries located in a brownfield area, brownfield redevelopment bonus refunds, and partial voluntary cleanup tax credits.

The tax refunds available as a qualified target industry may be for corporate income taxes, insurance premium taxes, sales and use taxes, intangible personal property taxes, emergency excise taxes, documentary stamp taxes, and ad valorem taxes.

The brownfield redevelopment bonus refunds of \$2,500 are available to any qualified target industry business for each new Florida job created in a brownfield area which is claimed on the qualified target industry's annual refund claim. Section 288.107, F.S., provides the minimum criteria for participation in the brownfield redevelopment bonus refund program.

Voluntary cleanup tax credit—One of the financial incentives that is getting increased attention as the brownfield program matures and gains in popularity, is the voluntary cleanup tax credit or VCTC. This is a tax credit available for site rehabilitation conducted at eligible drycleaning sites and brownfield sites in designated brownfield areas. To be eligible, the responsible party must execute a Brownfield Site Rehabilitation Agreement with the DEP.

The VCTC can apply toward either the intangible personal property tax or the corporate income tax. The amount of the credit is 35 percent of the costs of the voluntary cleanup activity that is integral to site rehabilitation. The maximum amount for a tax credit applicant is \$250,000 per year. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. However, the total amount of the tax credit that may be granted each year under the

program is \$2 million. To date, however, the total amount of applications for the tax credits has not reached the \$2 million cap in any one year.

As an inducement to complete the voluntary cleanup, the tax credit applicant may claim an additional 10 per cent of the total cleanup costs, not to exceed \$50,000 in the final year of cleanup.

The tax credits may be transferred once to another entity in whole or in units of not less than 25 percent of the remaining credit.

Brownfield Areas Loan Guarantee Program—The Brownfield Areas Loan Guarantee Program was created in 1998. A Brownfield Areas Loan Guarantee Council was created to review, approve, or deny certain partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves. A loan guarantee may only be for a period of not more than 5 years.

The limited state loan guarantee applies only to 10 percent of the primary lender's loans for redevelopment projects in brownfields areas. The loan guarantee holds until permanent financing is acquired or until the project is sold. Section 376.86, F.S., provides that no more than \$5 million of the balance of the Inland Protection Trust Fund in any fiscal year may be at risk at any time on loan guarantees or as loan loss reserves.

To date, the loan guarantee provisions have been used only one time. That project involved a shopping center and an out-parcel in a Clearwater brownfield area. The loan guarantee mechanism worked as it was designed to do. With the loan guarantee, the developer has more financial flexibility because the initial cash flow is not as great.

Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund—Section 376.87, F.S., provides for brownfield property ownership clearance assistance. The Legislature recognized that some brownfield redevelopment projects are more difficult to redevelop due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. The Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund was created to assist in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a negotiated process. The loans would be repaid in later years from the resale of the brownfield properties following site rehabilitation and other activities that will enhance the property's ultimate value. This trust fund has never been capitalized and used for its intended purposes.

The Senate Environmental Preservation Committee was assigned an interim project to review Florida's Brownfield Redevelopment Act to determine if the act could be amended to increase its effectiveness.

III. Effect of Proposed Changes:

Sections 1, 2, and 3.

Sections 199.1055, 220.1845, and 376.30781, F.S., are amended to increase the tax credit that is available against either the intangible personal property tax or the corporate income tax for costs

incurred for voluntary cleanup activity integral to site rehabilitation from 35 percent to 50 percent. Also, the amount of tax credit that may be granted to a tax credit applicant per year is increased from \$250,000 to \$500,000.

To encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up, current law allows the applicant to claim an additional 10 percent of the total cleanup costs in the final year of cleanup up to \$50,000. These sections are amended to increase the percentage to 25 percent and the maximum amount from \$50,000 to \$500,000. The total amount of the tax credit that may be granted annually is increased from \$2 million to \$5 million.

Section 4.

Part VII of ch. 288, F.S., creates Enterprise Florida, Inc., as the principle economic development organization for the state. It is Enterprise Florida, Inc.'s responsibility to aggressively market Florida's rural communities, distressed urban communities, and enterprise zones as locations for potential new investment, to aggressively assist these communities in the identification and development of new economic opportunities for job creation, and to fully market state incentive programs such as the Qualified Target Industry Tax Refund Program and the Quick Action Closing Fund in economically distressed areas. This section amends s. 288.9015, F.S., to require Enterprise Florida, Inc., to aggressively market brownfields as locations for potential new investment.

Section 5.

This section amends s. 376.86, F.S., to increase the amount of the Brownfield Areas Loan Guarantee from 10 percent to 25 percent.

Section 6.

This section repeals ss. 376.87 and 376.875, F.S., which relate to the brownfield property ownership clearance assistance program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund. This program has never been capitalized and used for its intended purposes.

Section 7.

This section provides an effective date of July 1, 2006..

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill would increase the amount of credit which may be applied against the tax on intangible personal property and the corporate income tax for the voluntary cleanup costs of a contaminated dry-cleaning or brownfield site from 35 percent to 50 percent. While annual tax credits have increased each year since 1998, the annual credits have not reached the \$2 million cap. According to DEP and the information provided for the Revenue Estimating Conference, for FY 2004-2005, the total tax credits applied for was \$856,252.51. The total number of applicants applying for the tax credits was 11, most of whom applied for tax credits on brownfield sites.

The Revenue Estimating Conference has estimated that this bill will reduce General Revenue by \$3 million in FY 2006-07 and thereafter. This is based on the assumption that the tax credits applied for and granted will reach the \$5 million cap. The actual amount may be between \$2 million and \$5 million.

Local governments could experience an increase in redevelopment activity in designated brownfield areas. That activity could result in an increased tax base for the local government.

B. Private Sector Impact:

It is anticipated that by increasing the amount of the tax credit available for voluntary cleanup at contaminated dry-cleaning and brownfield sites, interest and participation in redeveloping brownfield areas would increase. The revitalization of these predominantly urban areas would enhance the economy of the local government and bring new job opportunities.

The incentive to follow through with the voluntary cleanup should be enhanced by increasing the percentage and amount available in the last year of cleanup. The percentage is increased from 10 percent of the costs to 25 percent, and the cap is increased from \$50,000 to \$500,000.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
